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SUPREME COURT
STATE OF WASHINGTON

2008 FEB 15 P 2: 24

BY RONALD R. CARPENTER

CLERK

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

LOUIS LANCILOTI,

Petitioner.

No. 81219-5

RESPONDENT'S REQUEST TO
GRANT DISCRETIONARY
REVIEW

A. IDENTITY OF PETITIONER

The State of Washington, respondent, *joins* in Lanciloti's motion for direct discretionary review of the trial court's order concerning the constitutionality of a state statute and a local court rule.

B. DECISION

Wash. Const., article 1, section 22, provides that "[i]n criminal prosecutions the accused shall have the right to . . . have a

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speedy public trial by an impartial jury of the county in which the offense is charged to have been committed..." RCW 2.36.055 permits a county to designate two separate "jury assignment areas" in order to summon jurors to the courthouse closest to their home. Thus, jury master lists are created from two jury assignment areas within the county.

The trial court ruled in this case that RCW 2.36.055 is constitutional and that creation of a master list from a single jury assignment area, instead of from the whole county, is permissible. Thus, the trial court ruled that RCW 2.36.055 and King County Local General Rule (LGR) 18 are constitutional under the state constitution.

C. ISSUES PRESENTED FOR REVIEW

May the Washington state legislature authorize a county to draw jurors from two separate jury assignment areas surrounding two separate justice centers within the county in order to increase the diversity of citizen participation in jury service, as long as all jurors are drawn from within the county boundaries, or does article

1, section 22 demand that jurors be drawn from the county as a whole?

D. STATEMENT OF THE CASE

The defendant in this case was charged with possession of methamphetamine, alleged to have occurred in King County, Washington. Trial was set for early February and jury selection was to occur from a jury list made up of jurors from the Seattle jury assignment area. The defendant objected to selection of a jury from the Seattle jury assignment area; he demanded a jury made up of citizens from the entire county. The trial court considered briefing on the subject, heard argument, and ruled that King County's jury assignment system did not violate the state or federal constitutions.

In 2005, the Legislature amended RCW 2.36.055 so that a county with two justice centers could select jurors based on their proximity to a given justice center, instead of requiring jurors to travel to a justice center farther from the juror's home. In September, 2007, the King County Superior Court promulgated Local General Rule 18, implementing RCW 2.36.055, and

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permitting the county jury commissioner to select jurors from either the Seattle jury service area for trials at the King County Courthouse, or the Kent jury service area for trials at the Maleng Regional Justice Center. The effective date of the rule was September 1, 2007. At some point after September 1st, two juror source lists were in use for superior court trials in King County.

As of this writing, jury verdicts have been returned in about 104 criminal cases since LGR 18 took effect. The trials have included many serious felonies, including murders and sexual assaults. A number of judges in the King County Superior Court have ruled that RCW 2.36.055 comports with the state constitution, but two judges have ruled that it does not. Several of the judges who have ruled on this constitutional issue have recognized that there is room for honest debate on the question of the statute's constitutionality, and have certified that review by an appellate court would be appropriate. See Motion for Accelerated Discretionary Review, Appendix B (Ruling by the Honorable Joan DuBuque at 8-9) and Appendix C (Ruling of the Honorable Gregory Canova at 3).

A number of judges have, in the interest of caution and pursuant to

their authority under LGR 18 and LCrR 5.1, asked the jury commissioner to select jurors from a county-wide master list, so as to minimize the risk of reversal of the conviction.

The State has been keenly interested in resolving any questions regarding the constitutionality of this procedure but, unfortunately, no criminal defendant has filed an interlocutory appeal until this case; in the two cases where a King County judge ruled the statute unconstitutional, the State was not in a position to appeal.¹

E. ARGUMENT IN SUPPORT OF DISCRETIONARY REVIEW

The State respectfully asks this court to grant direct, discretionary review of this important question under the State constitution, and to accelerate review. At stake is the attempt by the legislature and the King County Superior Court to increase the rate at which citizens respond to a jury summons, thus increasing

¹ In one case, the parties reached a plea agreement. In the other case, the defendant was charged with rape of a child and the child victim would have been ill-served by the delay necessary for interlocutory review.

the diversity of juries and making King County juries a truer cross-section of the local population.

The defendant in this case alleges, however, that the superior court's interests conflict with the mandate of our state constitution. The State argues that juries drawn from jury assignment areas are "of the county" because they are drawn from within the county boundaries. The defendant insists that "of the county" means that jurors must be drawn from the entire county.

This is an important question of law and the State respectfully asks this Court to accept direct review of this case to resolve the question. Numerous cases have already been tried to verdict under the existing system, and it is expected that defendants will allege in numerous appeals that their convictions must be reversed because a jury was selected from less than the entire county. The State will oppose those requests, but a quick decision from this Court will provide much-needed guidance to the superior court, and it will also assist the appellate courts in resolving questions that arise on appeal.

Discretionary review is appropriate where there has been probable error, or where the superior court certifies that the issue presents a difficult question of law:

(4) The superior court has certified, or that all parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

RAP 2.3(b)(4).

The superior court judge in this case has certified -- like other judges who have ruled on the same legal question -- that the issue "involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation." Motion for Discretionary Review, Appendix A. Review is warranted on this basis alone. Lanciloti also claims that review is appropriate under RAP 2.3(b)(2). The State does not join in that particular argument because it does not agree that the trial court committed "probable error."

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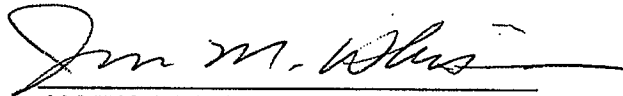
F. CONCLUSION

For the foregoing reasons, the State respectfully requests that this court grant direct discretionary review of the superior court's decision.

Submitted this 15th day of February, 2008.

DANIEL T. SATTERBERG
Prosecuting Attorney

**FILED AS ATTACHMENT
TO E-MAIL**



JAMES M. WHISMAN, WSBA #19109
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

Certificate of Service by Mail

Today I sent by electronic mail and deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Ramona Brandes, the attorney for the appellant, at Northwest Defenders Association, 1111 Third Avenue, Suite 200, Seattle, Washington, 98101, containing a copy of the RESPONDENT'S REQUEST TO GRANT DISCRETIONARY REVIEW, in STATE V. LANCILOTI, Cause No. 81219-5, in the Supreme Court of the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name: James M. Whisman
Done in Seattle, Washington

2/15/08
Date 2/15/08

**FILED AS ATTACHMENT
TO E-MAIL**

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